

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of

Telephone Number Portability

)
) CC Docket No. 95-116
) RM-8535

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**REPLY COMMENTS OF
ARCH COMMUNICATIONS GROUP, INC.**

Pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("Commission"), 47 C.F.R. § 1.415 (1996), Arch Communications Group, Inc. ("Arch"),¹ hereby files its Reply Comments in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

In the *Report and Order*, the Commission adopted rules and policies requiring local exchange carriers to provide both interim and long-term number portability. While the Commission imposed long-term number portability requirements on "all

¹ Arch provides wireless messaging services, primarily paging, to over 2.7 million units throughout the United States. Arch's operations include local, regional, and nationwide common carrier and private paging systems. Arch also holds interests in entities that will provide narrowband personal communications service throughout the country. Consequently, Arch is a "telecommunications carrier" as that term is defined by the Telecommunications Act of 1996 (the "1996 Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996).

² *Telephone Number Portability*, CC Docket No. 95-116, FCC 96-286, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 F.C.C.R. 8352 (rel. July 2, 1996). The report and order portion of this document will be referred to herein as the "*Report and Order*," and the Further Notice of Proposed Rulemaking shall be referred to as the "*Further Notice*."

cellular, broadband personal communications service (“PCS”) and covered SMR providers,”³ it declined to impose such requirements on paging and other messaging services and on certain other commercial mobile radio service (“CMRS”) providers.⁴ With regard to paging carriers, the Commission concluded that the costs to paging companies to upgrade their networks to accommodate either interim or long-term number portability solutions substantially outweighed the competitive benefits to be derived from service provider portability.⁵ No CMRS carriers are required to provide interim number portability.⁶

In addition to the *Report and Order*, the Commission adopted the *Further Notice* soliciting public comment on cost recovery for long-term number portability. Section 251(e)(2) of the 1996 Act provides that the costs of establishing long-term number portability should “be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”⁷ To that end, the Commission seeks comment on the meaning of the statutory phrase “all telecommunications carriers.” The Commission also seeks comment on whether it has the authority to exclude certain

³ 11 F.C.C.R. at 8355.

⁴ *Id.* at 8433-34

⁵ “Because of the technical hurdles faced by paging and other messaging service providers, the minimal impact that paging and messaging services have on local competition, and the competitive nature of paging and within the paging industry, we conclude that the costs to paging companies to upgrade their networks to accommodate either interim or long-term number portability solutions, estimated at \$40 million by one carrier, outweigh the competitive benefits derived from service provider portability.” *Id.* at 8433, n.451.

⁶ *Id.* at 8441-42.

⁷ 47 C.F.R. § 251(e)(2).

groups of carriers from the cost recovery mechanism for number portability, and if so, which carriers.⁸

Arch agrees with the comments of the Personal Communications Industry Association (“PCIA”) that the Commission has authority to exclude groups of telecommunications carriers from cost responsibility for the implementation of number portability. The competitive neutrality standard set forth in Section 251(e)(2) makes clear that paging carriers should not bear responsibility for the costs of implementing number portability because they receive no competitive benefit from number portability. Arch therefore urges the Commission to clarify that its cost recovery principles necessarily require the exclusion of paging carriers cost recovery mechanisms for both interim and long-term number portability.

II. COMPETITIVELY NEUTRAL COST ALLOCATION AND RECOVERY MUST EXCLUDE PAGING CARRIERS

Arch agrees with PCIA that the Commission has authority to exclude groups of telecommunications carriers from cost responsibility for the implementation of number portability. Section 251(e)(2) of the 1996 Act provides that the costs of establishing long-term number portability should “be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”⁹

In this regard, the Commission has determined that the “competitively neutral” language means that the costs of number portability to be borne by each carrier should “not significantly affect a carrier’s ability to compete with other carriers for

⁸ 11 F.C.C.R. at 8460.

⁹ 47 C.F.R. § 251(e)(2).

customers in the marketplace.”¹⁰ Simply put, a competitively neutral cost recovery mechanism can neither “give one service provider an appreciable, incremental cost advantage over another service provider, when *competing for a specific subscriber*” nor “have a disparate effect on the ability of *competing service providers* to earn a normal return.”¹¹ The Commission further makes clear that the relevant competing telecommunications carriers are those “expected to compete in the local exchange market.”¹²

According to the Commission, however, paging and messaging services “currently will have little competitive impact on competition between providers of wireless telephony service or between wireless and wireline carriers.”¹³ Consequently, the Commission excluded paging and messaging service providers from the obligation to provide number portability.¹⁴ Further, the Commission will consider imposing such obligations upon paging and messaging service providers only if “any of these services begins to compete in the local exchange market.”¹⁵ Simply put, the Commission has determined that paging and other messaging service providers do not compete in the local exchange market and will derive no benefits from number portability.

It is inconceivable that any cost allocation mechanism that ignores this distinction and treats paging carriers the same as carriers that will benefit from number

¹⁰ 11 F.C.C.R. at 8419.

¹¹ *Id.* at 8460 (emphasis supplied).

¹² *Id.* at 8433.

¹³ *Id.* at 8434.

¹⁴ *Id.* at 8433-34.

¹⁵ *Id.* at 8434.

portability can be considered to be “competitively neutral.” Indeed, the Commission has determined that imposing “any new or different obligations on carriers and customers that do not benefit from service provider portability” would be fundamentally unfair.¹⁶ As demonstrated in the comments of PCIA, in determining cost recovery methods, the Commission must take into account “the extent to which particular categories of telecommunications carriers are obliged to participate in providing number portability.”¹⁷ Thus, if the Section 251(e)(2) is to be logically and equitably construed, paging carriers cannot be among the universe of telecommunications carriers that bear responsibility for the costs of implementing number portability.

Commenters in this proceeding have argued that the phrase “all telecommunications carriers” should be read literally to mandate the inclusion of any provider of telecommunications services in number portability cost recovery.¹⁸ This argument improperly views the words “all telecommunications carriers” in isolation, ignoring the competitive neutrality component of the statutory directive. It is well settled that the meaning of a word or phrase used in a statute must be determined with reference to the accompanying words.¹⁹ Stated in the converse, it is improper, as a matter of

¹⁶ *Id.* at 8383.

¹⁷ PCIA Comments at 5.

¹⁸ *See, e.g.*, Comments of Time Warner Communications Holdings, Inc. at 5; Comments of Winstar Communications, Inc. at 3; Comments of Pacific Telesis Group at 3; Comments of SBC Communications, Inc. at 3-6; Comments of NYNEX at 5-6; and Comments of Bell Atlantic at 4.

¹⁹ *United States v. Morton*, 467 U.S. 822, 828 (1984) (stating “We do not . . . construe statutory phrases in isolation; we read statutes as a whole. Thus, the words . . . must be read in light of the immediately following phrase. . . .”) (citations omitted).

statutory construction, to take a few words such as “all telecommunications carriers” in isolation, and attempt to determine their meaning.²⁰

Assuming *arguendo* that the Commission determines that paging and messaging service providers should contribute to the costs of providing number portability, Arch urges the Commission not to adopt any cost recovery mechanism that will impose significant financial burdens upon classes of carriers, such as paging carriers, that do not benefit from number portability. The paging industry is a high volume/low margin business and faces significant economic pressure from the highly competitive nature of the paging market.²¹ Consequently, the industry has extraordinarily “low profit margins compared to the cellular industry and to other public mobile services.”²² Indeed, cellular carriers have averaged revenues of approximately \$60 per month per unit while paging carriers averaged revenues of between \$9 and \$17 per month per unit.²³ Any significant allocation of number portability costs to paging carriers will therefore have a

²⁰ While this canon of statutory interpretation need not be applied to a statute which is “too clear to admit interpretation,” such is not the case here. *See generally Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961). The ambiguity of the phrase in question is amply demonstrated by the fact that the Commission is seeking guidance regarding the proper interpretation of the words.

²¹ 11 F.C.C.R. at 8433, n.451.

²² *Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act*, MD Docket No. 95-3, *Report and Order*, 10 F.C.C.R. 13512, 13544 (1995); *see also Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1468 (1994).

²³ *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 95-317, 10 F.C.C.R. 8844, 8852, 8855 (1995).

disparate effect on the ability of paging service providers to earn their normal (and extremely limited) return, without providing any benefit in return.

Consequently, Arch supports PCIA's opposition to cost recovery mechanisms that create competitive disparities or inequitable funding obligations, such as basing contributions on net or gross revenues (which discriminates against low profit margin carriers), or on a per-telephone number basis. Arch supports instead allocating number portability costs based upon nationwide elemental access lines and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge, such as that proposed by SBC.²⁴

III. COST RECOVERY FOR INTERIM NUMBER PORTABILITY

In the *Report and Order*, the Commission determined that cost recovery for interim number portability should be guided by the principles discussed above.²⁵ Accordingly, the Commission directed the states to follow such principles "in mandating cost recovery mechanisms for currently available number portability methods."²⁶ Therefore, for the reasons stated above, paging carriers should also be excluded from bearing costs associated with interim number portability methods.

Arch urges the Commission to clarify that its cost recovery principles necessarily require that paging carriers be excluded from cost recovery mechanisms for both interim and long-term number portability. Commission action at this time is necessary to protect the interests of the paging industry.

²⁴ Comments of SBC Communications at 7-16.

²⁵ 11 F.C.C.R. at 8420.

²⁶ *Id.* at 8417.

The Connecticut Department of Public Utilities Commission recently ruled that the costs associated with the provision of interim number portability should be recovered from all telecommunications carriers, including paging carriers.²⁷ This action was ostensibly premised upon the Commission's findings in the *Report and Order* and was taken without notice to or participation by the affected paging carriers.²⁸ Further, the cost allocation methodology approved by the Connecticut Commission is based upon a carrier's number of active telephone numbers. As discussed above, this methodology has a disparate and inequitable impact upon paging carriers and does not satisfy the competitive neutrality standard mandated by Section 251(e)(2) and the Commission.

IV. CONCLUSION

For the forgoing reasons, Arch urges the Commission to exclude paging carriers from any recovery method for costs associated with the implementation of long-term number portability. Alternatively, any cost recovery method adopted by the Commission should avoid placing significant financial burdens upon classes of carriers, such as paging carriers, that do not participate in or benefit from number portability.

Respectfully submitted,

ARCH COMMUNICATIONS GROUP, INC.

By: 

Date: September 16, 1996

²⁷ *Application of SNET for Approval to Offer Interconnection Services*, Docket No. 95-11-08, at 64 (July 17, 1996).

²⁸ A group of paging carriers, including Arch, AirTouch Paging, and Paging Network, Inc., appealed this action to the Superior Court, Judicial District of Hartford/New Britain at Hartford on August 30, 1996.

CERTIFICATE OF SERVICE

I, Shelia L. Smith, do hereby certify that copies of the foregoing "Reply Comments of Arch Communications Group, Inc." were served this 16th day of September, 1996 by hand delivery to the following:

Chairman Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Rachelle Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

Shelia L. Smith